

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LIVERMORE VALLEY JOINT UNIFIED
SCHOOL DISTRICT,

Employer,
PETITIONER,

and

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION AND ITS CHAPTER 334,

Employee Organization,
PETITIONER,

and

UNITED PUBLIC EMPLOYEES, LOCAL 390,
SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO,

Employee Organization.

Case No. SF-R-28X
PERB Decision No. 165

PERB Order No. JR-9

October 21, 1981

Appearances: Jon A. Hudak, Attorney (Breon, Galgani & Godino) for Livermore Valley Joint Unified School District; Maureen C. Whelan, Attorney for California School Employees Association and its Chapter 334; W. Daniel Boone, Attorney (Van Bourg, Allen, Weinberg & Roger) for United Public Employees, Local 390, Service Employees International Union, AFL-CIO.

Before Gluck, Chairperson; Moore and Tovar, Members.

DECISION AND ORDER DENYING REQUESTS FOR

RECONSIDERATION AND/OR JUDICIAL REVIEW

The Public Employment Relations Board (hereafter Board) ,
having duly considered the Request for Reconsideration and
Request for Judicial Review filed by Livermore Valley Joint
Unified School District and California School Employees
Association and its Chapter 334 (referred to respectively as

District and CSEA, and jointly as Requestors), hereby denies those requests.

Requests for Judicial Review

In keeping with the statutory requirements for judicial review set forth at Government Code section 3542¹, Requestors contend that the instant case is one of "special importance" within the meaning of that statute. The basis for their contention is, in essence, that numerous wall-to-wall units of classified employees are in place throughout the state and hence that the issues raised by this decision will recur with frequency. CSEA argues further that there is presently no

¹The Educational Employment Relations Act (hereafter EERA) is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise specified. Section 3542 provides, in pertinent part:

(a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

clear judicial precedent as to the weight to be accorded the role of established practices in the determination of appropriate units under EERA.

With respect to Requestors' first contention, we note that we explicitly considered the widespread nature of wall-to-wall classified units in California in our underlying decision and weighed that factor in the balance. Some or all of the issues raised in the vast majority of unit determination cases will recur because the statute prescribes factors common to the inquiry in all such cases.² We decline to conclude that a case is rendered of "special importance" solely because an issue raised in that case will recur with frequency.³

With respect to the argument that the case requires judicial review because of the lack of judicial precedent regarding the weight to be accorded the role of established

²**While** the presence of the factors themselves will recur, it is highly unlikely due to the factual differences between districts, that the particular combination of factors present in this District will recur. Unit determinations, based as they are on a combination and interaction of many factors, are of necessity decided on a case-by-case basis. Our holding in the instant case should not be interpreted to mean that this Board will blithely grant severance requests in all future cases.

³**While** we note that this factor has been relied upon to some extent by a majority of this Board in cases where the Board has joined in a request for judicial review, this factor alone has never been sufficient. See Fairfield-Suisun Unified School District, et al. (6/18/80) PERB Order No. JR-8 and Grossmont Union High School District (7/25/77) EERB Order No. JR-2.

practices, we note that that factor was also considered and accorded due weight by the Board in reaching its decision in this case. That argument might be compelling if this were a case whose outcome turned on the meaning accorded unique statutory language.⁴ However, this was not such a case. Rather, the inquiry engaged in by the Board herein involved the weighing and balancing of the multiplicity of section 3545(a) factors⁵ in light of the particular facts presented by this case. Rather than turning on statutory interpretation, this was a typical unit determination case. It was thus precisely the sort of case in which the Legislature intended to limit parties' recourse to judicial review.

In light of the express language of section 3542, it would be incongruous if we were to certify a given case for judicial

⁴A majority of the Board was persuaded by such an argument in Fairfield-Suisun Unified School District, et al., supra, wherein the meaning attributed to the phrase "same employee organization" in section 3542(b)(2) was determinative of the entire case.

⁵Section 3545(a) provides:

In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

review on the grounds that the particular manner in which the Board weighed and balanced the section 3545(a) unit determination criteria in that case had not been previously ruled upon by a court. Further, such would be an abdication of our responsibility to interpret the statute which we enforce and would tend to render this Board simply another administrative hurdle to be cleared on the way to unit certification. This is obviously not the way the Legislature intended this Board to function, and we decline to do so.

For the reasons set forth above, we decline to hold that the instant decision is one of "special importance" within the meaning of section 3542 and hence deny Requestors' requests for judicial review.

The Requests for Reconsideration

Requestors contend that the Board should reconsider its decision in the instant case. In keeping with the requirements set forth in the Board's Rules and Regulations at Administrative Code section 32410,⁶ we note that the appropriate standard is "extraordinary circumstances". The

⁶**PERB** regulations are codified at Administrative Code section 31000 et seq. Section 32410 provides, in pertinent part:

- (a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision with the Board itself within

Board has determined that "substantial errors of law or fact constitute grounds for reconsideration." Bassett Unified School District (3/23/79) PERB Order No. Ad-62, Bassett Unified School District (7/3/79) PERB Order No. Ad-67. Requestors do not contend that the Board's decision rests on a clear factual error or an evident misapplication of an established rule of law, nor do they argue that there are circumstances herein which are out of the ordinary. For example, requestors do not contend that newly discovered evidence, not discoverable by them at the time of the hearing, changed circumstances, or other factors beyond their control mandate reconsideration of this case. Rather, they restate and rephrase arguments already raised by them and considered by the Board in its underlying decision, and simply disagree with the Board's determination. We find that Requestors have failed to demonstrate the existence of extraordinary circumstances which would warrant reconsideration. We thus deny their requests for reconsideration.


10 days following the date of service of the decision. The request for reconsideration shall be filed with the Executive Assistant to the Board and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required.

ORDER

1. The requests of Livermore Valley Joint Unified School District and California School Employees Association and its Chapter 334 that the Public Employment Relations Board join their respective requests for judicial review of Livermore Valley Joint Unified School District (6/22/81) PERB Decision No. 165 are denied.

2. The requests of Livermore Valley Joint Unified School District and California School Employees Association and its Chapter 334 that the Public Employment Relations Board grant their respective requests for reconsideration of Livermore Valley Joint Unified School District (6/22/81) PERB Decision No. 165 are DENIED.


By: Barbara D. Moore, Member

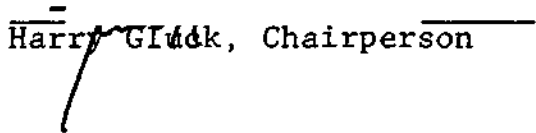

Irene Tovar, Member

Harry Gluck, Chairperson, concurring and dissenting:

In my dissent in PERB Decision No. 165, I indicated my concern that the majority had misapplied the so-called Sweetwater presumption, established a unit without an adequate factual basis as required by section 3545 of the EERA and had thereby created a situation posing a substantial threat to the stability of employer-employee relations represented by the

wide-spread existence of established wall-to-wall bargaining units.

I consider these factors to constitute the "extraordinary circumstances" justifying reconsideration under rule 32410. However, in its current decision denying the Requests for Reconsideration and Judicial Review, the majority, in its footnote 2, seeks to allay any concern that its unit determination presages the Board's future course of action. On this basis, I would find the quality of "special importance" to be missing. Therefore, I would grant the Requests for Reconsideration and deny the Requests for Judicial Review.


Harry Gluck, Chairperson